

Remarks

A "Notice of Non-Compliant Amendment" was mailed to the Applicant on March 14, 2006, indicating that a complete listing of claims was not provided – including withdrawn claims. Accordingly a complete listing has been provided herein, and the amendment proceeds verbatim hereinbelow.

Claims 1-6 have been withdrawn from consideration by previous office action, date June 13, 2005. Claims 7-11 are presently pending. Claim 7 has been amended. **Claims 7-11 have been rejected.**

The Examiner has rejected claims 9-11 under 35 U.S.C. § 112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner asserts that claim 9 recites the limitation "the central opening" in line 4, for which there is insufficient antecedent basis. Claim 7 has been amended to properly introduce a central opening, therefore obviating the Examiner's rejection of claim 9-11 for lack of antecedent basis.

The Examiner has rejected claims 7-11 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,890,693 to

O'Brien. As to claims 7-11, the Examiner asserts that O'Brien discloses a method of a knock-down stand at a work site where the stand is displayed, disassembling the stand and storing the components.

The rejection of claims 7-11 is respectfully but strenuously traversed for the reasons set forth in detail below.

Prior art is anticipatory if it explicitly or inherently discloses every limitation recited in the claims (M.P.E.P. 2131.05 [R-2]). In order for prior art to anticipate a claim of an application, *every single element* of that claim must be disclosed within a single source.

The rejection of claim 7-11 as being anticipated by O'Brien fails to satisfy this criterion. Specifically, O'Brien fails to disclose a critical component of the present invention, namely the case for holding the fire extinguisher, and the claimed method of using this critical component. While O'Brien does disclose a knock-down device and discloses the instructions for use of said device, such disclosure does not include *every single element* of the

present invention, therefore a rejection under §102(b) is inappropriate.

The Examiner asserts that different parts of the stand lend no patentable weight to the method being claimed.

This assertion is untrue and inapplicable to the present invention, as the primary purpose of the claimed method is for portably displaying a fire extinguisher. Without the case to hold the fire extinguisher, the present invention would not be operative in its intended capacity; to say that this component lends no patentable weight to the method being claimed is to undermine the entire invention's purpose and intended utility. If such an assertion were true, then no method of assembling and disassembling an invention could ever be claimed and subsequently patented, as all such methods claiming assembly and disassembly of an invention would be anticipated by O'Brien, or even printed instructions for use of common objects such as toys that disclose a method of assembly. It is the very components of an invention that make a method of assembly and disassembly possible, and make various patents claiming the method of assembling and disassembling such inventions novel and patentable. The Examiner's assertion that the components lend no weight to patentability and rejection

is, therefore, and inappropriate basis for rejection of claims 7-11.

Reconsideration and withdrawal of the rejection is respectfully requested.

The Examiner has also rejected claims 7-11 under 35 U.S.C. § 103(a) as being unpatentable over O'Brien. The Examiner asserts that O'Brien discloses a method of a knock-down stand at a work site where the stand is displayed, disassembling the stand and storing the components. Furthermore, the Examiner asserts that it is conventional to provide step-by-step instruction for the assembly and disassembly of the different parts of knock-down articles, it is within the general knowledge of one of ordinary skill in the art to follow assembly and disassembly instructions provided with a knock-down article, and those instructions conventionally teach how the different parts inter-engage with each other. Therefore, the Examiner asserts, it would have been obvious to one of ordinary skill in the art to assemble, disassemble and store components of a fire extinguisher stand.

This rejection is respectfully but strenuously traversed for the reasons set forth in detail below.

In general, three basic criteria must be satisfied in order to establish a *prima facie* case of obviousness (M.P.E.P. § 706.02(j)). First, the reference or combination of references must teach or suggest all of the claim limitations. Second, there must be a reasonable expectation of success. Third, there must be some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

The Examiner's rejection fails to satisfy the first criterion of the standard for rejection under 103(a). Specifically, the reference cited, O'Brien, does not teach or suggest all of the claim limitations. As discussed, *supra*, O'Brien does not disclose a critical component of the present invention, namely a case for holding a fire extinguisher, nor does O'Brien disclose the use of such a component. This component is what makes the present invention novel and useful. The method, as claimed, is wholly dependant upon the use of this component,

specifically, the attaching of the case to the pylon and the placing of a fire extinguisher in the case. As O'Brien fails to disclose either this essential component or the use of it, it does not teach or suggest all of the claim limitations and the standard for a rejection under § 103(a) has not been satisfied.

The Examiner also asserts that it is conventional to provide step-by-step instruction for the assembly and disassembly of the different parts of knock-down articles and those instructions conventionally teach how the different parts inter-engage with each other. Therefore, the Examiner continues, it would have been obvious of one of ordinary skill in the art to assemble, disassemble and store components of a fire extinguisher stand. This assertion is, again, untrue and inappropriate as a basis for rejection, and it is self-contradictory. If it is conventional to include step-by-step instruction for the assembly and disassembly of the different parts of knock-down articles and those instructions conventionally teach how the different parts inter-engage with each other, then it can not also be obvious to one of ordinary skill in the art to assemble, disassemble and store components of an invention. If it were obvious, such step-by-step

instructions would neither be necessary nor conventionally included. Essentially a method claim or patent is a series of instructions for use of an invention or object of any type. Without such instructions or such a claimed method, an intended user would be unable to utilize the invention or object as intended. As the Examiner's assertion is self-contradictory and fails to satisfy the first criterion for a rejection under §103(a), it is an inappropriate basis for rejection of claims 7-11.

Reconsideration and withdrawal of the rejection is respectfully requested.

In view of the foregoing remarks, reconsideration and allowance of the pending claims are respectfully solicited. Please remove the rejections under 35 U.S.C. § 112, 102(b) and 103(a), and enter the allowance of amended claim 7. The Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



Richard W. Goldstein

Reg. No. 36,527  
Attorney For Applicant(s)  
2071 Clove Road  
Staten Island, New York 10304  
(718) 727-9780